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(66)

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. Appeal No. 688 of 2005

M/s Ashirwad Agency and two others

Vs.

Indian Oil Corporation Limited and another

Post for Order: 11.05.2007

Sd/-
Dilip Raosaheb Deshmukh
Judge
11.05.2007

(69)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No. 688 of 2005

Appellants : 1. M/s Ashirwad Agency, Dealer – Indian Oil Corporation Limited, Post and Place:- Bemetara, Distt. DURG (C.G.)

: 2. Praveen Kumar Lakhotia, Aged 32 years, S/o Shri Brij Mohan Lakhotia.

: 3. Pradeep Kumar Lakhotia, Aged about 27 years, S/o Shri Brij Mohan Lakhotia

Appellants 2 & 3 C/o M/s Ashirwad Agency, Indian Oil Corporation Limited, Bemetara, Tah. Bemetara, Distt. DURG (C.G.)

Versus

Respondents : 1. Indian Oil Corporation Limited, Registered Office – G-9 Aliyawar Jung Marg, Bandra East Mumbai – 400051, through General Manager, Indian Oil Corporation Limited, Madhya Pradesh State Co-ordinatory, Bhopal, M.P.

: 2. Senior Divisional Manager, Indian Oil Corporation Limited, Raipur Divisional Office, Aerodrum Road, RAIPUR (C.G.)

MEMO OF APPEAL U/S 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996

Present: Shri V.G. Tamaskar, counsel for the appellants.
Shri Bhishma Kinger, counsel for the respondents.

ORDER

(Passed on 11th of May, 2007)

This appeal is directed against the order dated 31.03.2005 passed by 7th Additional District Judge, Fast Track Court, Durg, C.G. in Misc. Arbitration Case No. 21 of 2004 whereby the application under Section 34

(70)

of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the "Act") for setting aside the arbitral award was dismissed.

2. It is not disputed that the appellant M/s. Ashirwad Agency was the dealer appointed by Indian Oil Corporation at Bemetara. On 12.06.1999, MS samples drawn from the claimants' retail outlet failed in R.O.N. test, resulting in suspension of sales and supplies for 30 days. On 14.4.2000 the officials of the respondents inspected the retail outlet of the claimants and observed that density of the products was beyond permissible limits and hence sales and supplies were suspended. On 15.4.2000 the samples were drawn and forwarded to laboratory test. Though the H.S.D. samples met with specifications, M.S. samples failed in R.O.N. test. After giving a show-cause notice to the appellants, the dealership was terminated on 2.5.2001.

3. Pursuant to condition No. 69 of the memorandum of agreement between the parties, the dispute between the parties was referred to Sole Arbitrator Mr. M.S.Shinde appointed by the Director (Marketing) of the respondents vide letter 24.09.2001. The appellants and the respondent filed its claim and written statement respectively.

4. It was contended by the appellants-claimants that they were neither aware of the 'Octane' test nor any equipment was supplied to them to test the same. It was further contended that whatever material was supplied to them, the same was lying in the tank and they had neither mixed any products in the tank nor were they responsible for any adulteration.

It was thus contended that termination of dealership vide letter dated 2.5.2001 was illegal and arbitrary and prayed for restoration of dealership and also for compensation.

5. Before the Arbitrator, the respondent took the stand that the appellants/claimants were habitual adulterators, which resulted in termination of their dealership. Various incidents of mal-practice and irregularities committed by the appellants/claimants were also narrated. On these premises, it was contended that since the MS samples drawn from the claimants' retail outlet had failed in R.O.N. test, the dealership of the claimants was rightly terminated on 2.5.2001.

6. The learned Arbitrator entered into the reference and framed the following issues and recorded the findings thereon as shown below:

Sr. No.	Issues	Answers
1.	Whether respondent proved that samples drawn from the retail outlet of the claimant failed in RON test?	Yes.
2.	Whether claimant proved that termination of their retail outlet dealership is wrong and illegal?	Yes.
3.	Whether the claimant is entitled to for restoration of their dealership? And if so, whether claimant is entitled for damages?	No & Yes.
4.	What orders and costs?	As per Final order/award
	Additional Issues:	
5.	From which storage tank of Bhilai depot, the product was supplied to the dealer on 11/4/2000?	From tanks C & D.
6.	Whether RON test was conducted on 11/4/2000 of the product supplied to the dealer from the storage tank?	No.
7.	Whether any product was transferred in the above mentioned storage tank of Bhilai Depot, after 7/3/2000?	Yes

7. Shri Vikram Tamskar, learned Counsel for the appellants/claimants submitted at the very outset that he would not press on the relief of quashing the award passed by the Arbitrator, as sought by him in the appeal and would pray only for a modification of the award by restoring the dealership of the appellants. It was contended that the application for setting aside the arbitral award was under sub-clause (2) (a) (iv) of Section 34 of the Act. It was contended that since a clear finding was recorded on issue No.2 that the termination of the retail outlet dealership was wrong and illegal as it could not be concluded that the product which was supplied to the claimants was according to the R.O.N. specification, ~~therefore~~, the claimants could not be blamed for its consequent failure. It was further contended that once the Arbitrator recorded the finding that the termination of dealership of the claimants on 2.5.2001 was illegal, he was bound to allow the claim for restoration of dealership and compensation.

8. On the other hand, Shri Bhishma Kinger, learned counsel appearing for the respondents submitted that the claimants were habitual adulterators. Besides, under condition No.58 of the Contract, the dealership once terminated could not be restored even though termination was not proper. Reliance was placed on ***Indian Oil Corporation Ltd. vs. Amritsar Gas Service and others*** **(1991) 1 SCC 533** while contending that the dealership having been terminated by the respondent under the Contract, the relief of restoration of dealership could not be awarded.

9. Having heard rival contentions, I have perused the award. The respondents had placed before the Arbitrator various incidences of

malpractices/irregularities committed by the appellants/claimants as dealer. It is also to be noticed that the appellants herein did not file any rebuttal or even a simple denial of the affidavit filed by the respondents that the appellants were habitual adulterators. The Arbitrator had, therefore, rightly observed that he had no hesitation in holding that the claimants/appellants were habitual adulterators. The finding on issue No.2 recorded by the Arbitrator cannot, therefore, come to the aid of the appellants because the respondents were well within their right in terminating the dealership under condition No.58 of the agreement between the parties. The right to terminate the agreement was not only covered by the terms of the contract but was also without prejudice to any of their other rights against the dealer. Since the respondents had successfully proved that the appellants were habitual adulterators, relief of restoration of dealership could not be granted to the appellants.

10. So far as the claim for compensation is concerned, it is to be noticed that the claimants did not either adduce any evidence before the Arbitrator to show the quantum of damages due to termination or pray for any specified quantum of damages. In this view of the matter, the Arbitrator was also justified in refusing the prayer for compensation made by the appellants/claimants.

11. As a result, this appeal being devoid of any merit fails and is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

11 .05.2007